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# EPA's Goals

## Early Transfer Authority



Tom Barounis  
U.S. EPA Region V

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# Introduction

## EPA's goal for Early Transfer:

- Support the deed transfer of Federally owned property prior to the completion of required remedial action, especially at closing military facilities in appropriate circumstances
- EPA is responding to legislative concern that the requirement imposed on deed transfer of contaminated property has impaired the ability of DoD to dispose of BRAC property, under circumstances where the property would have been freely transferable if privately owned

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## History & Evolution of CERCLA 120(h)(3) Provisions

1980: CERCLA was enacted to provide for the cleanup of sites contaminated by chemicals designated as hazardous substances

1986: SARA amendments added Section 120 which directed Federal Agencies to comply with CERCLA and, among other provisions, imposed certain requirements to be met prior to the transfers of real property owned by Federal Agencies

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## CERCLA Section 120(h)

- Prior to any “contract for the sale or other transfer” or real property, the agency transferring the property must conduct a search of its records to determine whether hazardous substances are known to have been stored, released, or disposed of on the property and provide notice to the transferee

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## Real Property Transfer

Deeds for parcels to be transferred to a non-Federal entity were required to contain the previous notice, as well as certain covenants:

- All necessary remedial actions have been taken
- Any further action found to be necessary will be conducted by the U.S.

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## 1992 Amendments

- Modified Section 120(h) and codified EPA's view that when a groundwater remedy was in place and operational, the property could be transferred by deed

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## Covenant Requirements

- The 120(h)(3) covenant can be given when the agency has demonstrated to EPA that an approved remedial design is “operating properly and successfully”
- The requirement applied to both NPL and non-NPL installations

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## 1996 Deferral Authority

- Authorizes EPA and the Governor of a state to defer “has been taken” covenant requirement for parcels at NPL installations
- Authorizes the Governor of a state to defer the covenant requirement for non-NPL installations



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## Key Provisions Relating to Conditions Imposed on the Deferral Decision

The EPA and/or Governor must concur that:

- Property is suitable for transfer for the use intended
- Intended use is consistent with protection of human health and the environment

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## Requirements for Deferral

- A 30-day opportunity for the public to submit written comments on the suitability of the property transfer
- The transfer document shall provide restrictions on the use of the property
- Ensure the protection of human health and the environment
- Ensure that required remedial investigations response action and oversight activities will not be disrupted
- Assure that all response action will be taken

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## Requirements for Deferral (continued)

- Identify the schedules for investigation and completion of all necessary response action as approved by the appropriate regulatory agencies
- Federal agency must submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response actions

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## Federal Responsibility

Deferral under subparagraph 120(h)(3)(c) shall not increase, diminish, or affect in any manner any rights or obligations of a Federal agency (including any rights or obligations under Sections 106, 107, and 120 existing prior to transfer) with respect to a property transferred under this subparagraph

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## EPA's Early Transfer Guidance

- EPA Guidance on the transfer of Federal property by deed before all necessary response action has been taken pursuant to CERCLA Section 120(h)(3)
  - Real property listed on the NPL
  - Held by a Federal agency (landholding Federal agency)
  - Where the release or disposal of hazardous substances has occurred, but where all necessary response action has not yet been taken

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## Guidance Does Not Address:

- Transfers of property at non-NPL installations
- Transfers between Federal agencies
- Transfers of uncontaminated parcels/CERFA parcels
- Transfers of parcels with only petroleum contamination
- State requirements for NPL transfers

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# Guidance Does Not Require:

## **Interagency Agreement (IAG) or Federal Facilities Agreement (FFA)**

- “....existence of an IAG will significantly aid the Agency in making the covenant deferral decision.”

## **Record of Decision (ROD)**

- Schedule for selection and implementation of remedy must be provided

## **Remedial Investigation (RI) Report**

- Presumption that RI for parcel will be complete, but is not required if the Federal agency can demonstrate that a completed RI is not required for EPA's determination

## **Risk Assessment**

- Presumption that CERCLA risk assessment will be complete
- Federal agency may demonstrate that full risk assessment is not required

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## Covenant Deferral Request (CDR)

Provide sufficient information to support EPA's determination

1. Property description
2. Nature/extent of contamination
3. Intended land use during the deferral period/protective measures
4. Results from a risk assessment
5. Response/corrective action and operation and maintenance requirements



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## Covenant Deferral Request (CDR) (continued)

6. Contents of deed/transfer agreement
  - a. Notice
  - b. Covenant
  - c. Access
  - d. Response action assurances

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## Transferee Conducted Cleanup

- Transferee response action assurances and agreements
  - Landholding Federal agency remains responsible
  - Technical and financial capacity of transferee must be demonstrated
  - Cleanup must meet CERCLA/NCP requirements

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## Process for Developing and Reviewing CDR

- Landholding Federal agency provides notice to regulators and affords them an opportunity to participate in the development of the draft CDR
- Publish notice of proposed transfer/30-day comment period
- Provide draft CDR to Restoration Advisory Board (RAB)
- Submit final CDR to the appropriate EPA Regional office and State representative including Response to Comments

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## Deferral Authority

- EPA Administrator has delegated authority to EPA Regional Administrators
- EPA Regions may redelegate to level of ROD signature
- State must concur for deferral to be effective
- Deferral must occur before property is transferred

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## Benefits of Early Transfer from EPA's and States' Perspective

- Consistent with the President's policy to promote more rapid reuse of closing facilities
- Permits deed transfer of properties at an earlier time than the existing "operating properly and successfully" process
- Allows the transferring Federal agency to reduce the period of "caretaker status" for property, thereby saving resources that could be committed to cleanup
- Allows Local Reuse Authorities to take title to property and promotes quicker reuse due to elimination of some financial barriers

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## Key BCT Concepts

- Start everything early; Anticipate; Identify
- Communicate; Educate; Coordinate
- Plan

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## Mather AFB and Early Transfer

- 25-acre parcel at NPL installation
- No surface contamination (contaminated groundwater)
- ROD signed (groundwater system under construction)
- No wells or treatment plant on parcel

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## Issues Addressed During FOSET Development at Mather AFB

- Size of parcel in relation to EDC lease/conveyance
- Potential for LBP contamination associated with structures
- Potential UXO associated with nearby historic Bombing Range
- Crafting language which correctly expressed agreed upon concepts
- Defining a Mechanism to assure that the State could enforce deed restrictions